ATTORNEY FOR APPELLANT:

STEVEN R. PRIBYL
Langer & Langer
Valparaiso, Indiana

ATTORNEYS FOR APPELLEE:

STEVEN M. BUSH
DAVID P. MATSEY
Millbranth and Bush
Valparaiso, Indiana

IN THE
COURT OF APPEALS OF INDIANA

ROBERT L. FICKLE,	)	
	)	
Appellant-Petitioner,	)	
	)	
vs.	)	No. 64A05-0604-CV-179
	)	
RAE M. FICKLE,	)	
	)	
Appellee-Respondent.	)	

APPEAL FROM THE PORTER SUPERIOR COURT
The Honorable William B. Alexa, Judge
The Honorable Katherine R. Forbes, Magistrate
Cause No. 64D02-0403-DR-2388

January 23, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

KIRSCH, Chief Judge

Robert L. Fickle ("Bob") appeals the trial court's decree of dissolution, claiming that

the trial court erred when it included in the marital estate a debt owed to the parents of his now ex-wife, Rae M. Fickle ("Rae").

We affirm.

FACTS AND PROCEDURAL HISTORY

Bob and Rae were married in 1994. In May 1997, Rae's parents took out a loan in the amount of $22,000.00 and loaned this sum to Bob and Rae to make repairs to their home and cover their debts. The full loan amount was distributed to Rae and Bob in various forms on several occasions. Later that same year, Rae and Bob filed for Chapter 11 bankruptcy listing various creditors. They did not list Rae's parents as creditors, but informed them of the proceeding and reassured them that their debt would be repaid. Rae and Bob made various payments on the debt before and after the bankruptcy. At the final dissolution hearing, Bob testified that, at the time of the bankruptcy, he did not list Rae's parents as creditors because he did not know there was an outstanding balance on their loan and that he "did not feel it was necessary to list family in bankruptcy at that time." *Tr.* at 156.

The trial court entered its decree of dissolution finding:

> That during the marriage the parties borrowed the sum of $22,000.00 from Wife's parents to pay off certain bills and make certain repairs. That said loan was to be repaid and the parties have in fact made some payments on the loan. That there remains an unpaid balance of $16,000.00. That each party shall be responsible for repayment to Ray and Linda Perez in the amount of $8,000.00 and hold the other harmless therefrom.

Appellant's App. at 4-5. From this finding, Bob now appeals.

DISCUSSION AND DECISION

Bob contends that the closing of their bankruptcy discharged the marital debt owed to Rae's parents. Particularly, he asserts that even though Rae's parents were not listed as creditors in the bankruptcy, they were aware of the proceedings and did not timely file a claim; thus, the debt owed to them was discharged under 11 U.S.C. § 523(a)(3).[1] Further, Bob states that even if the parties made payments after the bankruptcy was closed, they never signed a reaffirmation agreement necessary to revive the obligation.[2] For these reasons, Bob asserts the trial court committed reversible error by including the debt in the marital estate.

In response, Rae asserts that Bob is asking this court to adjudicate the rights of her parents, who are not parties to this action. Rae also contends that Bob's request would require us to reweigh the evidence, which we cannot do. Rae submits that Bob's proper remedies would have been to join her parents as a party to the dissolution proceeding or seek a discharge determination in federal bankruptcy court.

When reviewing a claim that the trial court improperly decided the marital estate, we must determine whether the trial court's decision is clearly erroneous or constitutes an abuse of discretion. *In re Marriage of Dall,* 681 N.E.2d 718, 720 (Ind. Ct. App. 1997). Reversal is appropriate where the trial court's decision is clearly against the logic and effect of the circumstances before it. *Id.* We consider the facts most favorable to the trial court's decision and may not reweigh the evidence or assess the credibility of witnesses. *Id.*

Whether a debt is discharged is a question of federal bankruptcy law, and it is left to

[1] 11 U.S.C. § 523(a)(3)(A) provides that an unlisted creditor's claim may not be discharged, "unless such a creditor had notice or actual knowledge of the case in time for such timely filing . . . ."

[2] 11 U.S.C. § 524(c) details the circumstances upon which an otherwise dischargeable debt may survive bankruptcy.

the sole discretion of the bankruptcy court. *Strohmier v. Strohmier*, 839 N.E.2d 234, 236 (Ind. Ct. App. 2005). Although, state courts have concurrent jurisdiction to determine what satisfies the specific nondischargable debts of maintenance and support, there is no claim here that the disputed debt falls within this category. *See Goodman v. Goodman*, 754 N.E.2d 595, 603 n.6 (Ind. Ct. App. 2001) (citing *Frazier v. Frazier*, 737 N.E.2d 1220, 1223 (Ind. Ct. App. 2001)).

The trial court only has the authority to adjudicate the rights of the divorcing couple. *Sovern v. Sovern*, 535 N.E.2d 563, 567 (Ind. Ct. App. 1989). The trial court's order does not affect the liability of the parties to any third parties who are not before the court. *Id.* at 566. For this reason, we decline to address whether the debt to Rae's parents was discharged in bankruptcy. Rae's parents are not parties to this proceeding, and their interests cannot be determined. *Sovern*, 535 N.E.2d at 566. Bob is asking us to determine the rights of Rae's parents without ever providing them their day in court. We agree with Rae that Bob's best option would be to seek a determination of discharge in the bankruptcy court with Rae's parents as named parties.

We also note the trial court did not determine that the debt to Rae's parents is discharged or nondischargable. *See Goodman*, 754 N.E.2d at 603 n.3 (court declined to determine whether or not a debt constituted support or maintenance and deferred to the bankruptcy court). To the extent that Rae and Bob's obligation to Rae's parents was discharged in bankruptcy, either party may raise bankruptcy discharge as an affirmative defense in any action to recover the debt. *See Allender v. Fields*, 800 N.E.2d 584, 586 (Ind.

Ct. App. 2003); Ind. Trial Rule 8(C); *see also Frazier*, 737 N.E.2d at 1223 ("bankruptcy discharge voids judgments based on the personal liability of the debtor"). If the debt survived bankruptcy, the trial court's order is enforceable.

We find that the trial court did not err in its apportionment of the debt to Rae's parents between Rae and Bob as a marital debt.

Affirmed.

SHARPNACK, J., and MATHIAS, J., concur.